IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2605 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARENDRA KUMAR & 5 Ors.

Versus

OIL & NATURAL GAS CORPORATION

Appearance:

MR JJ YAJNIK for the Petitioners
MR SB VAKIL, ld. Senior Advocate with
MR RAJNI H MEHTA for Respondenta Nos. 1 & 2
MR KV GADHIA for Respondent No. 3-4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 09/04/2002

ORAL JUDGEMENT

Heard the learned advocates.

The petitioners, six in number, are the employees

of the Oil & Natural Gas Corporation Limited, the respondent no. 1 herein [hereinafter referred to as, `the Corporation']. The petitioners are the Executives in the Corporation and challenge promotion made on 28th February, 2001 from the posts at E4 level to E5 level and from E5 level to E6 level. Before I deal with the contentions raised in the petition, it should be noted that though the petitioners have challenged the promotions made on 28th February, 2001 on the posts at E5 and E6 level, the petitioners have not impleaded the concerned persons who are so promoted. One more disturbing fact I found is that the respondents nos. 5 to 10 have been added to the cause-title of the petition under the endorsement, `Amended as per court order dated 25.1.2002.' It should be noted that no order has been made on 25th January, 2002 or on any other date permitting the petitioners to implead the respondents nos. 5 to 10. It is highly irregular and illegal that the parties have been added to the cause title of the petition in a pending petition without seeking Court's permission. The names of respondents nos. 5 to 10 added to the cause title are, therefore, ordered to be removed.

The only challenge to the impugned promotion is in respect of the interviews held by the interviewing committee.

Mr. Yajnik has submitted that the Board of Directors had, under its Resolution dated 29th August, 1999, done away with the hitherto prevailing practice of granting promotion after holding interviews i.e., since the Board Resolution dated 29th August, 1999, the promotions were required to be made solely on the basis of educational qualification, experience, performance, appraisal reports, mobility, medical fitness, etc. However, in utter disregard to the above policy-decision taken by the Board, the Corporation decided to consider promotions after holding interviews. In other words, not the above referred factors would be the sole guiding factors for considering the officers for further promotion but the personal interview also shall have a bearing on the promotions. The Promotion Committee would have no power whatever to decide upon the promotion policy. The concerned officers have unilaterally changed the promotion policy without the authority of law. The decision to hold interview is, thus, ultra vires and calls for interference by this Court. The promotions made on the basis of the other relevant factors and the personal interview are equally bad and require to be quashed and set-aside. The petitioners have also admitted that earlier in the subject matter of this

petition, the petitioners had instituted civil suits and also a writ petition. Neither of the said proceedings was taken to its logical end. Mr. Yajnik has, therefore, strenuously urged that the present petition shall not be barred by the principle of res judicata or constructive res judicata. He has submitted that all the aforesaid proceedings were initiated before the orders of promotion were made i.e., during the period when the interviews were held. After the promotions are made, there is a fresh cause of action and a writ petition would be maintainable. In support of his arguments, he has relied upon the judgments of the Hon'ble Supreme Court in the matters of Smt. Pujari Bai v. Madan Gopal [dead] L.Rs. vz. Smt. Jaiwanti & Ors. [AIR (1989) SC 1764]; of M/s. Tilokchand Motichand & Ors. v. H.B Munshi, Commissioner of Sales Tax, Bombay & Ors. [AIR (1970) SC 898]; of The Workmen of Cochin Port Trust v. The Board of Trustees of the Cochin Port Trust & Anr. [AIR (1978) SC 1283]; of Arati Ray Choudhury v. Union of India & Ors. [AIR (1974) SC 532]; of Joseph Pothen v. The State of Kerala [AIR 1965 SC 1514]; of Ahmedabad Manufacturing & Calico Printing Company Limited v. The Workmen & Anr. [AIR (1981) SC 960]; of Hoshnak Singh v. Union of India & Ors. [AIR 1979 SC 1328]; of Indian Oil Corporation Limited v. State of Bihar & Ors. [AIR (1986) SC 1780]; and of Kunwar Ram Nath & Ors. v. The Municipal Board, Pilibhit, [AIR (1983) SC 930].

In answer to the notice issued by this Court, the learned sr. advocate Mr. S.B Vakil has appeared with the learned advocate Mr. Rajni H. Mehta for the respondents. The petition is hotly contested. Mr. Vakil has submitted that the action of the Departmental Promotion Committee has been ratified by the Human Resources Management Committee in its meeting held on 25th September, 2000 and by the Board in its meeting held on 30th October, 2000. The minutes of the meeting of the Human Resources Managing Committee held on 25th September, 2000 and the relevant part of the minutes of the Board meeting held on 30th October, 2000 are placed on the records of the matter [pp 254 to 256]. In view of the said ratification made by the Board, the challenge of the petitioners as regards the procedure adopted for considering the cases of the officers of the Corporation for further promotion to the posts at E5 & E6 level shall fail. No other contention is raised with respect to the challenge to the impugned promotions.

Mr. Vakil has strenuously urged that the present petition deserves to be dismissed in limine for it is nothing but the abuse of process of the court. The very

petitioners had instituted Regular Civil Suit No. 1562 of 2000 in the Court of the learned Civil Judge [SD], Vadodara and had also moved the notice of motion Exh. 5 alongwith it. The said notice of motion was urgently moved on the closed Saturday. The learned Judge granted the ad-interim relief to the effect that the petitioners' case also be considered for further promotion. The petitioners, thus, failed in stalling the promotions. The petitioners, therefore, without disclosing the factum of the civil suit no. 1562 of 2000, instituted another suit being Regular Civil Suit No. 1563 of 2000 on the next day i.e., Sunday and moved it before another Judge. In the said Regular Civil Suit No. 1563 of 2000, initially, the petitioners succeeded in obtaining ad-interim injunction against the Corporation. However, the same was ultimately vacated under order dated 2nd December, 2000. The Civil Misc. Appeal No. 345 of 2000 preferred against the said order dated 2nd December, 2000 was also dismissed by the learned Extra-Assistant Judge, Vadodara on 12th January, 2001. The Civil Revision Application No. 145 of 2001 preferred before this Court was allowed to be withdrawn on 5th February, 2001. The petitioners also preferred Special Civil Application No. 813 of 2001 before this Court under Article 226 of the Constitution in the same subject matter. The said writ petition too was withdrawn on 28th February, 2001. While considering the petitioners' prayer for liberty to file fresh petition, this Court [Coram : D.C Srivastava, J.] observed as under :-

> `6. So far as liberty to file fresh petition challenging the promotions is concerned, the objection of Shri Mehta has force. If the promotions are challenged it will not be mere challenge to promotions but, also challenge to promotion policy. The promotion policy was challenged in two civil suits, two injunction applications and in misc. appeal filed before the lower court and civil revision before this Court. Consequently, no direction is to be given permitting the petitioners to file fresh petition challenging the promotion as requested. If the petitioners feel that fresh cause of action will accrue or has accrued to them, they can act in accordance with law even without liberty from this Court.'

Mr. Vakil has submitted that multiplicity of proceedings is abuse of process of law. Petition, therefore, requires to be dismissed on that ground alone. In support of his argument, Mr. Vakil has relied upon

the judgments of this Court in the matters of Bai Virkor, D/o. Mulsing Ramsing v. Prajapati Damodar Boghabhai [20 (2) GLR 652] and of Dahyabhai Ranabhai Vaghela v. Bloom Dekor Limited & Ors. [1995 (1) GLH 865].

In the matter of Smt. Pujari Bai v. Madan Gopal [Supra], the Hon'ble Court while considering the principle of res judicata under section 11 CPC, has held that, `dismissal of a writ petition in limine or dismissal on the ground of laches or availability of alternative remedy would not operate as re judicata.' The same is the view expressed by the Courts in all the above referred judgments relied upon by Mr. Yajnik. Mr. Yajnik has submitted that neither of the proceedings instituted by the petitioners was heard and decided on merits. The said proceedings, therefore, shall not constitute a bar of res judicata, so far as the present petition is concerned. Neither of the above referred judgments shall have applicability to the facts of the present case since the respondents have not raised the issue of the petition being barred by the principles of res judicata. Instead, what is submitted is that the petitioners have resorted to multiplicity of proceedings and that they have tried to act smart by instituting a suit without disclosing the factum of the first suit. The petitioners have thus resorted to abuse of process of law.

In the matter of Bai Virkor [Supra], similar were the facts. The plaintiff in the first suit, pending the said suit, filed another suit in the same subject matter for the same reliefs without disclosing the fact of pending suit. The Court was called upon to decide, `whether the plaintiff can be permitted with immunity to proceed with the second suit or whether the second suit should be treated as a still born suit and if it is to be treated as a still born suit, under what provisions of law it can be so treated.' The Court was of the opinion that the second suit against the same defendant, on the same cause of action and for the same relief cannot be held to be barred by the principles of re judicata. The Court held that, `before the bar of res judicata can be invoked, it must be held that any controversy between the parties in the present suit was finally adjudicated upon between the same parties in the previous suit. That is not the case here. Similarly, it has to be stated that the present second suit cannot be held to be barred under Order II, Rule 2 CPC. A mere look at Order II, Rule 2 CPC shows that before the said provision can be pressed into service, it has got to be established that the plaintiff is guilty of splitting up her whole claim based

on single cause of action against the same defendant by putting forward different parts of the same claim in different suits against the same defendants and/or is praying for a different relief based on the same cause of action in the second suit against the same defendant having not previously obtained leave of the court in which the first suit is pending to enable her to adopt such a course.' Eventually, the Court held that, `provisions of Order II, Rule 2 CPC cannot shut out the trial of the present suit. Same is the situation so far as Order IX, Rule 9 is concerned.' The Court ultimately came to the conclusion that the second suit was not maintainable as being abuse of process of the Court. The Court held that, `the totality of the admitted facts of the case, which have been mentioned by me in the earlier part of the judgment, leaves no room for doubt that the plaintiff-appellant was out to be smart with the Court and was interested in playing hide and seek with the Court and for certain reasons best known to her, filed the present suit-suppressing all the relevant facts pertaining to the prior suit which was pending in the same court against the same defendant, for the same relief and based on the same cause of action. Such an action of the plaintiff can certainly be said to be abuse of the process of court, wanting in bona fides, and being purely vexatious and frivolous to the defendant.' The Court further held that, `so far as our Courts are concerned, the inherent power to pass appropriate orders in the interest of justice and for preventing abuse of the process of court are enshrined in section 151 of the CPC. In absence of any other positive provision in the Code of Civil Procedure directly applicable to the situation like the present one, section 151 can squarely be pressed in service. The Court will have ample power and jurisdiction to pass appropriate orders in such cases in the aid of justice and for preventing abuse of the process of the Court. Once it is found that the plaintiff had tried to be smart with the court and had abused the process of the court, the court will have jurisdiction in exercise of the inherent powers under section 151 CPC to pass appropriate orders and to hold that it will not aid such a plaintiff who has not come with clean hands and that the proceedings taken by her which are found to be tainted and which can be dubbed as the abuse of process of the court should be consigned to teh record room without passing any orders on merits and that they should be treated as not maintainable.'

Similar is the view expressed by this Court in the matter Dahyabhai Ranabhai Vaghela [Supra]. Considering the facts of the said case, the learned Judge found that, `...From the aforesaid history of litigation, it becomes clear that successive suits were filed against the defendant no. 1-Company in various courts in the State of Gujarat. The purpose of filing such suits were to restrain the defendant no. 1-Company from issuing and dispatching share certificates to the subscribers and further restraining the Company from utilizing the funds received towards subscription and thus to see to it that the public issue of the Company does not materialize.' In above view of the facts, after considering the various provisions of law and number of authorities on the point, the Court held that, `...It is thus clear that institution of successive suits or litigations in same or different courts, based on same or similar averments for same or similar reliefs coupled with further attempts to obtain ex parte temporary injunction with full knowledge of the fact that on the same facts and set of pleadings, injunction is either refused or vacated in earlier proceeding by another court, is in the opinion of this court, nothing but an abuse of the process of the Court.' Having held that the petitioners had resorted to the abuse of process of the Court, the Court proceeded further to impose exemplary costs.

In the present case also, indisputably, the petitioners having failed to obtain ad-interim injunction as desired in Regular Civil Suit No. 1562 of 2000, instituted another suit being Regular Civil Suit No. 1563 of 2000 in the same Court on the same cause of action without disclosing the factum of pending suit instituted the previous day. Having failed to obtain desired interim injunction against the promotions, in both the suits i.e., Regular Civil Suits Nos. 1562 of 2000 and 1563 of 2000, and having carried the matter upto this Court in Civil Revision Application No. 145 of 2001, the petitioners also preferred Special Civil Application No. 813 of 2001. The fact of the said Special Civil Application has been recorded hereinabove.

In the present case, as observed hereinabove, the sole intention of the petitioners in instituting successive litigations was to stall the promotions of hundreds of employees of the Corporation, and thus, to hold the Corporation at ransom. The petitioners have thus resorted to the abuse of process of Court to wreak vengeance against the Corporation. The petition, therefore, requires to be dismissed in limine on that ground alone and the petitioners are required to be

saddled with exemplary costs.

In view of the above discussion, the petition is dismissed. Notice is discharged with costs. Cost is quantified at Rs. 5,000/= for each of the petitioners i.e., each of the petitioners will pay costs of Rs. 5,000/= to the respondent-Corporation. In the event, any of the petitioners fails to pay the costs imposed under this order, the respondent-Corporation shall be at liberty to recover the same from the salary of the concerned petitioner.

[Ms. R.M Doshit, J.]

Prakash*